THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (S/S) No. 619 of 2006

Kailash Tiwari, Son of Sri Laxmi Tiwari, serving as Assistant Teacher L.T. Grade (Hindi), Bazpur Co-operative Sugar Factory Inter College, Bazpur, District Udham Singh Nagar.

… **Petitioner.**

Versus

1. District Education Officer, Udham Singh Nagar.
2. Committee of Management, Bazpur Cooperative Sugar Factory Inter College, Bazpur, District Udham Singh Nagar.

… **Respondents.**

Sri Manoj Tiwari, Advocate, learned counsel for the petitioner.
Sri N.P.Shah, Learned Standing Counsel for the respondent no.1.

Dated May 06, 2006.

PC:
(Hon'ble B.S.Verma, J.)

Heard Sri Manoj Tewari, learned counsel for the petitioner and Sri N.P.Shah, learned Standing Counsel for the State, who has accepted notice on behalf of all the respondent no.1.

The learned counsel for the petitioner has filed Supplementary Affidavit, which is taken on record.

The petitioner has filed this writ petition for issue a writ order or direction in the nature of certiorari for quashing the impugned advertisement as published in Newspaper "Dainik Jagran" dated 22-4-2006 (Annexure No. 1 to the writ petition), which relates to the selection to the post of Lecturer (Hindi) in Bazpur Cooperative Sugar Factory Inter College, Bazpur, District Udham Singh Nagar. He has further prayed for issue a writ order or direction in the nature of mandamus restraining the respondents from filling the vacancy on the said post by direct recruitment.

The petitioner has stated that the Institution is a fully government aided institution and the provisions of the U.P Intermediate Education Act, 1921and regulations framed there-under are applicable to the college. It has been stated in paragraph no.2 of the Supplementary Affidavit that the Bazpur Co-operative Sugar Factory Inter College Bazpur is a recognized institution which is fully aided by the State Government and its affairs are governed by the said Act, as aforesaid. The salary of the teachers and other employees is being paid by the District Education Officer in accordance with the Payment of Salaries Act, 1971.

The main ground of challenge in the writ petition is that the respondent no.2 Committee of Management had issued an advertisement, whereby applications have been invited for the post of Lecturer (Hindi) by direct recruitment. The petitioner is aggrieved by the notification of vacancy on the post of Lecturer (Hindi) on the ground that the direct recruitment quota has already been filled in the institution and the vacancy in question is required to be filled up by promotion alone as per provision of Chapter II, Regulation 5(2)(a) of the U.P. Intermediate Act, 1921, which reads as under:-

"Fifty per cent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade shall only be filled by promotion from amongst the teachers working in the institution in the L.T,. and the C.T. grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion."

The petitioner has stated in para no. 6 of the writ petition that the Management is in great hurry to fill the post by direct recruitment in pursuance of the advertisement, which is against the provisions of the Regulation referred to above and in a short time, the management is going to hold the interview.

In the course of arguments, the learned counsel for the petitioner made a prayer that before conducting the interview, the respondent No.1 may be directed to consider the grievance of the petitioner. The prayer is innocuous.

The petitioner is given liberty to file representation to this effect for redressal of his grievance within three days from today before the respondent no.1. If the petitioner makes a representation before the authority concerned-respondent no.1, who shall decide the representation of the petitioner within a period of two weeks. It is made clear that the respondent authority shall decide the representation of the petitioner, if so preferred, before conducting the interview by a speaking order and till the decision on the representation, no selection shall be made by the respondents in pursuance of the advertisement referred to above. The learned Standing Counsel shall communicate the order to the respondent no.l.

With the above observations, the petition id disposed of finally.

(B.S.Verma, J.)

RCP